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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

REVIEW PETITION NO.88 OF 2006

IN

WRIT **PETITION NO.1877 OF 2004**

Ivory Properties & Hotels P.

Ltd. & Anr.....Petitioners

Vs.

Municipal Corporation of

Greater Mumbai & Ors.....Respondents

Dr. Virendra V. Tulzapurkar, Senior Counsel with
Ms.Snehlata Paranjape, Ms. Hemlata Jain and Ms.
Rohini Shelke i/b.Mahrnosh Humranwala for petitioner.
Mr. Preeti Purandare, for respondent No.1.
Ms. Kiran Bhagalia for Respondent No.2.
Mr. Jai Chinoy, Senior Counsel with Mr. Shekhar Shetye, i/b. Pandya Gandhi & Co., for Respondent Nos. 4 to 7.
Mr.Sagar Talekar i/b. Mr. Rui Rodrigues for Respnt.3.

CORAM: **F.I. REBELLO &**
S.R. SATHE, JJ.
DATE: 7th December 2006

P.C.

. The Review Applicants were not parties in the writ proceedings. They are, however, aggrieved by the following directions issued by us by our order dated 28th June, 2004 which reads as under:-

> "It is further directed that respondent No.1 will not grant fresh I.O.D. for construction in the area in the vicinity of the planning

area of Respondent No.2 without first providing for the storm water drainage to land and building in that area. It is made clear that Respondent No.1 will not grant I.O.D. which will result in storm water drainage or the land in the planning area of Respondent No.2."

2. In the earlier part of our order we had directed that the arrangement for providing necessary drainage facility be made by 31st December, 2005. As the same has not been provided the Review Applicants have approached this Court by this Review Petition on 25th June, 2006 as their building plans were not processed on account of the order of this Court.

3. During the course of the hearing on behalf of Respondent Nos. 1 and 2 a report of the Joint Meeting held between Municipal Commissioner, M.C.G.M. and Metropolitan Commissioner, MMRDA held on 14th November, 2005 has been placed on record. In terms of the said report Respondent Nos. 1 and 2 have arrived at an arrangement for construction of Storm Water Drain. Nothing, however, is set out as to when the same would be completed.

4. It has been pointed out on behalf of the petitioners that the arrangement between the Respondent Nos. 1 and 2 would result in the

petitioners and such similarly situated persons having to pay for construction of storm water drainwhich is not permissible in law considering the judgment of this Court and the statutory duties cast on Respondent Nos. 1 and 2. It is not necessary for us to decide that controversy. It will be open to the respondent No.1 to impose such conditions in the IOD and if any party is aggrieved by the same it will be open to them to challenge the same before a competent forum.

5. In the light of the arrangement arrived at between the respondent Nos. 1 and 2 our impugned order dated June 28, 2004 in so far as para.7 is varied to the following extent:-

(i) It will be open to Respondent Nos.1 and 2 to grant IOD subject to such terms and conditions that they will impose for granting such permission and the order of this Court directing the construction of storm water drain.

(ii) The issue as to whether the Applicants as the owners of the property or the owners of surrounding area where storm water drain is provided is to be constructed whether they have to pay for the same is kept open for consideration. Any person aggrieved by the levying of such charges in terms of the minutes of understanding can challenge the same before a

Competent forum inclding this Court if such a chalenge is available.

(iii) With the above observations, review petition stands disposed of.

(F.I. REBELLO, J)

(S.R. SATHE, J.)